

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office Wycliffe House
Water Lane Wilmslow Cheshire SK9 5AF

If you would like further information on the consultation, please email the Direct Marketing Code team.

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our privacy notice.

Questions

Q1 Is the draft code clear and easy to understand?

Yes

If no please explain why and how we could improve this:

Q2 Does the draft code contain the right level of detail?

(When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

No

If no please explain what changes or improvements you would like to see:

- In our opinion the Code does not adequately address the provisions of Article 14; in parts (i.e. in the summary and on page 102) it states that an organisation must provide privacy information within a reasonable period of obtaining the data and no later than one month from the date of collection but does not flag the provisions in Article 14(5)(b). An example in the later section on “Disproportionate effort” would be extremely helpful.
- We consider the section under “Disproportionate effort” may not sufficiently nuanced as it fails to take account of potential situations in which individuals **would** reasonably expect a profile of their interests and characteristics to be conducted. For example, in the field of philanthropy, when engaging with high net worth individuals with a high/public profile, there is an expectation that an organisation will understand that person’s philanthropic interests, hobbies, organisational affiliations etc and have carried out research - otherwise, how could an organisation prepare for a meeting with that individual?
- The draft Code differs significantly from the current guidance in that it appears to extend the definition of “direct marketing” to include all processing activities that support the creation of the marketing communication. We would welcome the ICO setting out the legal argument for this position in the Code.

- It would be useful to have some guidance on what “actively promoting or encouraging” looks like. The Code states that if a service message has elements that are direct marketing, then the marketing rules will apply, even if it is not the main purpose of the message but we wonder if what is deemed a service message and what is deemed direct marketing is also driven by context. A more nuanced approach, taking into account possible context, would be helpful.

It would be helpful if clarification could be provided on the use of consent collected via third parties; as currently written, this section might be interpreted as applying to data processors contracted on behalf of a data controller

Q3 Does the draft code cover the right issues about direct marketing?

Yes

If no please outline what additional areas you would like to see covered:

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation’s direct marketing practices?

Yes

If no please outline what additional areas you would like to see covered:

Q5 Is it easy to find information in the draft code?

Yes

If no, please provide your suggestions on how the structure could be improved:

However an index would be useful

Q6 Do you have any examples of direct marketing in practice good or bad, that you think it would be useful to include in the code?

Yes

If yes, please provide your direct marketing examples:

Partially addressed mail under the existing code could have been interpreted as acceptable, however the new code explicitly excludes it

Q7 Do you have any other suggestions for the direct marketing code?

no

About you

Q8 Are you answering these questions as:

(Please select the one that is most appropriate)

An individual acting in a private capacity (eg someone providing their views as a member of the public)

An individual acting in a professional capacity

On behalf of an organisation - yes

Other

Please specify the name of the organisation you are representing:

RSPCA

If other please specify:

Q9 How did you find out about this survey?

ICO Twitter account

ICO Facebook account

ICO LinkedIn account

ICO website

ICO newsletter

yes

ICO staff member

Colleague

Personal/work Twitter account

Personal/work Facebook account

Personal/work LinkedIn account

Other

Please specify:

**Thank you for responding to this consultation. We value
your input.**

